IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.87 of 2006

Decided on: October 9, 2006

Rakesh Kumar and others **.....Appellants.**

VERSUS

Prem Singh and others **.....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. Subhash Sharma, Advocate.**

For the respondents : **Mr. Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate, for respondents No.1 and 2.**

None for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. A suit was filed by respondents Prem Chand and Sant Ram claiming that they were joint owners in possession to the extent of specified shares in certain land, assessed to revenue, as they had purchased those shares in the year 1985 from one of the co-sharers, named Hari Chand impleaded as defendant No.1. It was alleged that said Hari Chand after making the sale in favour of the respondents-plaintiffs made another sale in favour of the appellants-defendants in the year 1988, in respect of the same share which he had already sold to them.

3. Appellants-defendants contested the suit. They alleged that in the year 1988 Hari Chand himself was owner in possession of

---

Whether the reporters of the local papers may be allowed to see the judgment?

the share allegedly sold by him to the plaintiffs and that in the revenue papers also name of said Hari Chand was reflected and they purchased said Hari Chand's share by a registered sale deed in the year 1988. They claimed that they were bonafide purchasers for consideration.

4. Trial Court decreed the suit holding that the respondents-plaintiffs, having purchased the entire share of Hari Chand prior in point of time, compared to the date of the sale executed in favour of the appellants-defendants, were the true owners and the appellants-defendants' plea that they were bonafide purchasers for consideration was rejected. Appellants-defendants filed appeal in the court of District Judge but could not succeed.

5. I have heard the learned counsel for the appellants-defendants and gone through the record.

6. The submission made by the learned counsel for the appellants is that since the names of respondents-plaintiffs were not reflected in the *Jamabandi* for the year 1986-87, which was in vogue at the time when the appellants-defendants purchased the share of Hari Chand, they are required to be presumed as bonafide purchasers for consideration and, therefore, the finding of the two Courts below to the contrary is liable to be reversed. According to him, Hari Chand was in physical possession of the share recorded in his name at the time of the sale in favour of the appellants-defendants and this is an additional factor suggesting that the appellants-defendants are bonafide purchasers.

7. I am not convinced by the submission. Hari Chand was only a co-sharer to the extent of 1/12th share in two parts of the

property, and to the extent of 1/24th share in respect of the 3rd part of the property, described in the sale deed. This was a case of joint ownership. None of the co-owners, whose names figure in the revenue papers, is shown to be in exclusive possession of any specific khasra number or portion of the suit property. Therefore, the presumption is that all the co-owners were in joint possession. When all the co-owners are supposed to be in possession, the plea of the appellants-defendants that vendor Hari Chand was in possession of the property sold by him in their favour cannot be accepted. They were required to have led positive and definite evidence that Hari Chand was in possession of the portion of the joint property sold to them and that that fact led them to believe that Hari Chand continued to be the joint owner.

8. The abovestated position apart, Hari Chand, while in the witness-box as DW-1, has categorically stated that when he made the sale of his share in favour of the respondents-plaintiffs, he put them in possession; meaning thereby that he ceased to be in joint possession after making the sale in favour of the respondents-plaintiffs. If that is so, the appellants-defendants cannot be heard to say that they are bonafide purchasers for consideration, because not only that the entry was in favour of Hari Chand in the revenue papers but he was also in physical possession.

9. Learned counsel drew my attention to certain portions of the judgment of the trial Court wherein evidence of a couple of witnesses has been misquoted. I agree with the submission that two witnesses categorically stated that the appellants-defendants had been in possession of the suit property prior to consolidation but the

trial Court has noted that these witnesses testified that the appellants-defendants had been in possession since consolidation, but that should not make any difference so far as the finding is concerned, in view of the abovestated position.

10. In view of the above discussion, I do not think that any substantial question of the law arises. The appeal is, therefore, dismissed.

CMP No.118/2006

Infructuous.

October 9, 2006(sd) **(Surjit Singh), J.**